

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 16-CR-21

SAMY MOHAMMED HAMZEH,

Defendant.

GOVERNMENT'S EXPERT WITNESS DISCLOSURE

The United States of America, by and through its attorneys, United States Attorney Matthew D. Krueger and Assistant United States Attorneys Gregory J. Haanstad and Benjamin P. Taibleson, hereby submits the following expert disclosure pursuant to Federal Rule of Criminal Procedure 16(a)(1)(G) and Criminal Local Rule 16(a)(4).

Introduction

Defendant Samy Mohammed Hamzeh is charged in each count of a three-count indictment. He is charged in Count One with possessing a machinegun, in Count Two with possessing another machinegun, and in Count Three with possessing a silencer. Each of these counts allege a violation of 26 U.S.C. § 5861(d). The charges stem from Hamzeh's purchase of two machineguns and a silencer from undercover law enforcement officers on January 25, 2016.

Potential Expert Witnesses

1. David A. Smith

David Smith is a Firearms Enforcement Officer (“FEO”) with the Firearms & Ammunition Technology Division of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). He has been an FEO since April 2016. In that capacity, FEO Smith

- Provides technical information regarding firearms identification, operation, and design to assist the ATF and other law enforcement agencies implement federal laws.
- Conducts examinations and testing of firearms and related materials submitted as evidence by federal, state, and local law enforcement agencies.
- Prepares technical reports, official correspondence, and training materials relating to the identification and origin of firearms and their classification under federal law.
- Conducts examinations and classifications of submitted prototype firearms or related devices.
- Testifies as an expert witness regarding firearms classification, identification, origin, and design.
- Evaluates all types of firearms for import classification.
- Determines the origin and classification of various types of ammunition.
- Prepares official ATF responses to written inquiries from the firearms industry and the public.
- Assists in maintaining the ATF Firearms Reference Collection, which includes approximately 19,000 firearms.

Before joining ATF, FEO Smith was employed from July 2010 to April 2016 as an Equipment Specialist Ordnance (ESO) with the Department of Homeland Security (“DHS”). There, he provided technical expertise regarding firearms and ordnance items for a number of agencies. He also was responsible for providing instructions in firearms maintenance and use, and for inspecting, rebuilding, and manufacturing firearms and silencers.

Before his time with DHS, FEO Smith was a Precision Weapons Specialist in the United States Marine Corps, a position in which he was responsible for manufacturing, testing, and maintaining a wide array of sniper rifles and inspecting, repairing, and modifying shot guns, machineguns, and other weapons.

FEOSmith has received formal training in a number of areas, including the Gun Control Act of 1968, the National Firearms Act of 1934; the Arms Export Control Act of 1976; making firearms; and destructive devices.

FEOSmith examined and test-fired the machineguns identified in Counts One and Two, and conducted a sound analysis of the silencer identified in Count Three. FEOSmith will testify that the firearm identified in Count One of the indictment incorporates the receiver of a machinegun. He will also testify that he test-fired the machinegun identified in Count One. He first placed the selector switch in the semiautomatic, or “E” position and inserted one round of ammunition. When FEOSmith then pulled the trigger, the single round was expelled.

FEOSmith then loaded the machinegun with two rounds of ammunition and the selector still in the E position. The machinegun expelled one round of ammunition with a single pull of the trigger. When FEOSmith repeated the test-fire with two rounds loaded but with the selector in the fully automatic, or “F” position, the machinegun fired both rounds automatically, with a single pull of the trigger.

FEOSmith then loaded the machinegun with five rounds, with the selector still in the F position. When he pulled the trigger, the machinegun expelled all five rounds automatically with a single pull of the trigger.

FEOSmith will testify that, based on his observations and test-fire, the firearm identified in Count One of the indictment is a machinegun, as that term is defined in Title 26, United States

Code, Section 5845(b), and is therefore required to be registered in accordance with the provisions of Title 26.

FEO Smith will also testify that the machinegun identified in Count Two of the indictment incorporates the receiver of a machinegun. He also will testify that he conducted the same type of test-fire of the machinegun identified in Count Two of the indictment as he did with the Count One machinegun, again using one, two and five-round loads and testing both the semiautomatic and the fully automatic selector positions. With the selector in the fully automatic position, the firearm expelled more than one round of ammunition automatically with a single pull of the trigger. FEO Smith will testify that, based on his observations and test-fire, the firearm identified in Count Two of the indictment is a machinegun, as that term is defined in Title 26, United States Code, Section 5845(b), and is therefore required to be registered in accordance with the provisions of Title 26.

FEO Smith will testify that he examined the silencer identified in Count Three of the indictment. He will testify that the silencer has the following design features and characteristics of silencers:

- Encapsulated chamber;
- Baffles;
- End-cap

FEO Smith will testify that, based on its design, characteristics, and purpose, the item identified in Count Three is a firearm silencer under the Gun Control Act of 1968 and the National Firearms Act of 1934 and is required to be registered in accordance with the provisions of Title 26.

FEO Smith also will testify, based on his training and experience, that:

- Machineguns are capable of inflicting much greater damage in much less time than are handguns and other weapons.
- Largely for that reason, machineguns are principally offensive firearms.
- Machineguns' lack of precision and the difficulty in wielding them quickly are inconsistent with their use as weapons of self-defense.
- Silencers are inconsistent with defensive use of a firearm, and are primarily used offensively.

Included in the discovery that the government has provided to the defendant is a report that describes in detail FEO Smith's opinions, the bases and reasons for those opinions, and FEO Smith's qualifications as an expert.

2. *Kevin Cassidy*

Kevin Cassidy is a Special Agent with the Federal Bureau of Investigation ("FBI"). He is a certified firearms instructor and is a member of the FBI's Special Weapons and Tactics ("SWAT") team. SA Cassidy will testify that, on January 23, 2016, he test-fired the machineguns identified in Counts One and Two of the indictment. Another FBI Special Agent, SA Neil Lee, video recorded the test-fire of the two machineguns, and the government intends to introduce that video at trial. The video recording of SA Cassidy conducting the test-fires of the two machineguns has been provided to the defendant in discovery.

SA Cassidy will testify that he loaded the Count One machinegun with ten rounds. When he pulled the trigger, all ten rounds were expelled automatically with a single pull of the trigger. He again loaded the machinegun with ten rounds and pulled the trigger. Again, all ten rounds were expelled automatically with a single pull of the trigger.

SA Cassidy will testify that he also loaded the Count Two machinegun with ten rounds. When he pulled the trigger, all ten rounds were expelled automatically with a single pull of the

trigger. He again loaded the machinegun with ten rounds and pulled the trigger. Again, all ten rounds were expelled automatically with a single pull of the trigger.

SA Cassidy will also testify that, based on his training and experience:

- Machineguns are capable of inflicting much greater damage in much less time than are handguns and other weapons.
- Largely for that reason, machineguns are principally offensive firearms.
- Machineguns' lack of precision and the difficulty in wielding them quickly are inconsistent with their use as weapons of self-defense.

Dated at Milwaukee, Wisconsin, this 2nd day of July, 2018.

Respectfully submitted,

s/ Gregory J. Haanstad
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